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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,587	02/19/2004	Rudy Guzman	64730.24	4737

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EXAMINER

PATTERSON, MARIE D

ART UNIT PAPER NUMBER

3728

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/782,587

Applicant(s)

GUZMAN, RUDY

Examiner

Marie Patterson

Art Unit

3728

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/19/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. Applicant's election of group I, figures 1-5, claims 1-17 in the reply filed on 12/14/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, and 4-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (5894686) in view of either Norment (5345700) or Feiner (6278378).

Parker shows a shoe comprising a loudspeaker (54), lights (2 and 3), and a controller (50) comprising switches (55 and/or 57, and discussed in column 6 lines 39-47) which may be separate switches substantially as claimed except for providing indicia over the switches. Either Norment or Feiner teaches providing indicia (25 and 28 and discussed in column 5 line 65-column 6 line 12 or element 140) over a switch. It would have been obvious to provide indicia as taught by either Norment or Feiner over the switches in the shoe of Parker to allow the user to easily locate the switch desired and to provide an aesthetically pleasing switch.

In reference to claims 5-8, 12, and 14-17, Parker suggests different talking voices associated with different switches (column 6 lines 39-46). Feiner or Norment teach

associating the indicia with the sound/light pattern produced. The exact indicia/sound/word is considered a choice of design and it would have been obvious to use shapes with shape words, numbers with number words, or any other known printed indicia and sound association in the shoe of Parker to allow the shoe to be used for teaching, amusement, safety, training, etc..

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2, and 4-17 above, and further in view of either Rodgers (5422628) or Silverman (5483759).

Parker as modified above shows a shoe substantially as claimed except for the exact switch for the light elements. Rodgers or Silverman teaches the use of inertia switches for the use in lighted footwear. It would have been obvious to use an inertia switch as taught by either Rodgers or Silverman for the lights in the shoe of Parker as modified above to allow the lights to flash according to movement of the footwear.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (572)272-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

Marie Patterson
Primary Examiner
Art Unit 3728

